

1 Honorable Brian D. Lynch
2 Hearing date: December 16, 2020
3 Hearing time: 9:00 a.m.
4 Response date: December 9, 2020
5 Chapter 7
6 Location: Telephonic

5 UNITED STATES BANKRUPTCY COURT
6 WESTERN DISTRICT OF WASHINGTON

7 In re

8 No. 20-40514

9 COOKIE KINNEY,

10 MOTION TO APPROVE SETTLEMENT

11 Debtor.

I. FACTS

12 The debtor filed the present Chapter 7 Bankruptcy Petition on February 21, 2020. The
13 debtor's Statement of Financial Affairs listed payments to National Debt Relief for debt
14 consolidation services in the amount of "\$101.50, twice a month for the last year" in the one year
15 prior to filing the Bankruptcy Petition, or the sum of approximately \$2,436. Based on
16 documentation later produced to the Trustee by the debtor, the amount of the payments made to
17 National Debt Relief LLC (hereinafter referred to as "NDR") in the one year period prior to the
18 filing of the Bankruptcy Petition, before she canceled her account with NDR, totaled \$2,030.
19

20 The Trustee believed that the payments made to NDR were either avoidable pursuant to 11
21 U.S.C. § 548 and/or that the fees retained by NDR, in the aggregate amount of \$711.69, were
22 done so in violation of the Washington Debt Adjusting Act (RCW 18.28 *et seq*), which would
23 also constitute a violation of the Washington Consumer Protection Act (RCW 19.86 *et seq*),
24 entitling the estate to recover treble damages and attorney fees and costs if successful.
25

26 Accordingly, an adversary proceeding to recover the transfers in question was filed on October
27

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1 7, 2020. Counsel for NDR contacted the Trustee and offered to settle the estate's claims for
2 payment in the amount of \$2,000.00, which the Trustee rejected, due to the strength of her
3 claims, but the Trustee submitted a counteroffer in the amount of \$2,300.00, which NDR has
4 accepted, subject to Court approval.
5

6 II. ISSUES

7 2.1 **Whether the settlement agreement is fair, reasonable and should be**
8 **approved, after consideration of the four factors set forth in A & C**
Properties, 784 F.2d 1377 (9th Cir. 1986).

9 III. DISCUSSION

10 3.1 **The compromise/settlement is fair, reasonable and should be approved.**

11 The Court has great latitude in approving compromise agreements and may approve a
12 compromise if it is "fair and equitable." *In re Woodson*, 839 F.2d 619, 620 (9th Cir.1988). An
13 order approving a compromise will be upheld absent abuse of discretion. *In re A & C*
14 *Properties*, 784 F.2d 1377 (9th Cir. 1986).

15 To determine whether a compromise is fair and equitable, the Court should consider the
16 probability of success in the litigation, the difficulties to be encountered in collection, the
17 litigation's complexity and its attendant expense, inconvenience and delay, and the paramount
18 interest of the creditors with a proper deference to their reasonable views. *In re MGS Marketing*,
19 111 B.R. 264 (9th Cir. BAP 1990); *In re Woodson, supra*; *In re A & C Properties, supra*.

20 A compromise should be approved if the Trustee establishes to the reasonable
21 satisfaction of the Court that it is prudent to eliminate the risks and delays of litigation to achieve
22 certainty rather than a possible ultimate recovery. *In re Central Ice Cream Co.*, 59 B.R. 476,
23 487-488 (Bankr. N.D. Ill. 1985). The Court does not have to decide the numerous questions of
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1 fact and law raised by objecting parties. *In re Heissinger Resources Ltd.* 67 B.R. 378, 383 (C.D.
2 Ill, 1986). The Court's responsibility is to canvass the issues and see whether the settlement
3 "falls below the lowest point in the range of reasonableness". *Id.*, citing, *In re W.T. Grant Co.*,
4 699, F.2d 599, 608 (2nd Cir. 1983).

5
6 The Trustee believes the settlement proposed is fair, reasonable, and in the best interest
7 of the estate. In reaching the settlement, the Trustee considered the factors outlined in *In re A &*
8 *C Properties*, 784 F.2d 1377 (9th Cir. 1986), as set forth below:

9 a. Probability of Success in Litigation

10 While NDR appeared informally through counsel and disputed the application of RCW
11 18.28.080 (1) against NDR, the Trustee is confident that she would prevail on NDR's violation
12 of the Debt Adjustment Act.

13 b. Collection Difficulties

14 No collection difficulties were considered in this settlement as the settling party is
15 believed to be solvent.

16 c. Complexity and cost of Litigation, inconvenience of delay

17 The adversary proceeding was only recently filed and any further litigation regarding the
18 amount or the extent of the damages or award to be made would increase the cost of litigation
19 and delay the resolution.

20 d. Best Interest of Creditors

21 Costs of administration will be greatly reduced if this settlement agreement is approved.
22 Enhancing the amount of the distribution by the estate by the reduction of such costs, and
23 avoiding further delay in the distribution is in the best interest of creditors.

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IV. SUMMARY

Given (1) the complexity, expenses and likely duration of litigation; (2) the balance between the likelihood of success compared to the present and future benefits offered by the litigation; (3) the risk of establishing liability and damages; (4) the relative benefits achieved through settlement; (5) the proportion of the Bankruptcy Class that are believed will support the settlement; and (6) the range of reasonableness of the settlement fund in light of all the attendant risks of litigation, the Trustee submits that the settlement should be approved.

DATED this 6th day of November, 2020.

By: /s/ Kathryn A. Ellis
Kathryn A. Ellis, WSBA #14333
Attorney for Trustee

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